

DISSENTING VIEWS

During the course of the Judiciary Committee's work concerning the eleven charges brought against President Clinton by Independent Counsel Ken Starr, I have sought to do my duty as a member of the House Judiciary Committee: to keep an open mind, study the historical origins of our Constitution's impeachment standard and subsequent legal precedent, listen carefully and conduct myself in a manner that my constituents, history and my children will respect.

I have worked hard to be attentive to all arguments and points of view on these subjects, no matter from which political party, if any, the author of those views emanated. Now, I have, after all these months of hard work and deliberation, been called upon to vote on Articles of Impeachment.

With regards to the charges of perjury, abuse of power and obstruction of justice brought by Judge Starr against the President emanating from the Paula Jones civil deposition and the later Grand Jury testimony regarding that deposition, none of us on the House Judiciary Committee were fact witnesses to any of the alleged acts. Even Judge Starr has repeatedly admitted that he was not a fact witness to any impeachable offense allegedly committed by the President.

In the present case, however, Judge Starr has chosen only to make opening statements, both written and oral. He has presented no fact witnesses. Instead, he has relied on transcribed portions of statements from people whose civil deposition was taken or who were questioned by his staff before a grand jury. But none of these witnesses was ever cross-examined by the President's counsel or anyone else, even though there was a great deal of conflicting and ambiguous testimony given by each of these witnesses. In addition, the President's counsels, David Kendall and Charles Ruff, and the House Judiciary Committee's minority counsel Abbe Lowell, in their written and oral responses, have rebutted and refuted each and every one of the charges raised by Judge Starr.

Here, when basic facts are in doubt, I firmly believe that it was incumbent upon those advancing the impeachment of a sitting U.S. President, to bring forth the fact witnesses so that we on the House Judiciary Committee could hear them, see them and cross-examine them.

Cross-examination of the people whose words one wants to use to prove something in a judicial proceeding is an old and longstanding requirement of our American system of justice. Being a nation founded by rebels loathe to take the word of government officials only, our Founders gave all accused the right to confront witnesses against them, to put the burden of proving guilt on the accuser and did not require the accused to prove his or her innocence. To put the burden of proof on the accused, in this case President Clinton,

subverts not only the Congress' impeachment power, but two hundred years of American justice.

Some argue that because it is the Senate that conducts the impeachment trial of the President, the House Judiciary Committee should not require certainty of the truthfulness of the impeachment charges. However, when the subject is the impeachment of the President of the United States, it is my opinion that a clear and convincing standard of proof must be met before the House Judiciary Committee and the House of Representatives send this matter to the Senate.

Our Founders created a democracy in which the President was to be the only person in America elected by all the people. The President was to be in office for only four-year terms and would not be guaranteed any tenure longer than four years at a time. Only in extraordinary circumstances would the Congress be able to remove a sitting President.

As you may know, the Federalist Papers #65 speaks of a real fear that a House of Representatives dominated by one political party would impeach a President of the opposite party without sufficient cause or proof—causing a terrible shock and disruption to our political system.

That is why the Framers of the Constitution set the bar for Presidential impeachment so high. They specifically rejected such standards as "maladministration" and failure to demonstrate "good behavior." Instead, they chose "treason, bribery, or other high Crimes and Misdemeanors." According to most scholars, that phrase clearly meant offenses as serious a threat to the republic as "treason" or "bribery."

The various experts and scholars who made presentations to the Judiciary Committee reminded us that President Clinton can be sued civilly and criminally for any conduct at issue. He is not above the rule of law. Therefore, no matter what decision this Congress makes about impeaching President Clinton, the world knows, and our children know, that the rule of law in America applies to all of us—even the President.

But this impeachment vote is not about enforcing the civil or criminal law, that is the role of the civil and criminal courts. Our responsibility is to determine if Judge Starr has sufficiently proven any facts upon which our Constitution would permit Congress to remove our duly elected President from office.

In my opinion, Judge Starr's burden of proving his case of perjury, obstruction of justice and abuse of power—by clear and convincing evidence—has not been met.

In particular, given the conflicting interpretations given to the deposition and grand jury witnesses' transcripts relied upon by Judge Starr, it was incumbent upon those seeking President Clinton's impeachment to present us with the fact witnesses who would support the charges. We needed to hear them, see them and cross-examine them in order to have determined the truthfulness of Judge Starr's conclusions of fact and law. None were brought before us. The prosecution's burden was not met. Therefore, I will vote against issuing Articles of Impeachment against President Clinton based on Judge Starr's charges.

However, that is not the end of this matter. As a nation, we must address what we all were witness to in January 1998 when President Clinton volunteered to us on television that he never had sexual relations with Monica Lewinsky. The President was adamant and demanded that we believe him. At that time, he had no reason to rely on the narrow definition of "sexual relations" he believed he was held to in the Paula Jones civil deposition. He was not telling us the truth. He lied to us.

I agree with the overwhelming majority of Republican and Democratic constitutional scholars that the President's televised lie and his relationship with Ms. Lewinsky do not rise to the level of "treason, bribery or other high Crimes and Misdemeanors." However, I believe that the President's lie to the American people, as well as his admitted adulterous behavior with Ms. Lewinsky in the White House, demands punishment. Only by taking action against that conduct will we be able to look our children in the eyes and tell them that even presidents who lie and conduct themselves with such dishonor will be punished. That is why I will be voting to censure President Clinton on those grounds.

STEVEN R. ROTHMAN.